

Memorandum of Decision: 02-20140051R
Corporate Income Tax
For the Years 2005, 2006, 2007, and 2008

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

The Department agreed that an Advance Pricing Agreement between Parent Company and the IRS constituted a "federal modification" for the years 2005, 2006, 2007, and 2008 and that the Parent Company timely filed amended Indiana returns by which it sought the refunds under dispute.

ISSUE

I. Corporate Income Tax - Statute of Limitations.

Authority: IC § 6-3-4-6(c); IC § 6-8.1-9-1(a); IC § 6-8.1-9-1(f).

Taxpayer argues that it is entitled to a refund of corporate income taxes because the refunds were requested within the statute of limitations period.

STATEMENT OF FACTS

Taxpayer is an out-of-state parent of a group of affiliates. Taxpayer conducts business in Indiana, in other states, and in foreign countries. Taxpayer files Indiana income tax returns.

Taxpayer filed amended 2005, 2006, 2007, and 2008 Indiana income tax returns dated August 1, 2013. The returns sought refunds of income tax. The Indiana Department of Revenue ("Department"), in a letter dated January 10, 2014, denied the refunds stating that "Our records reflect that the statute of limitations on these [refund] requests has expired. The amendment and any refunds for the 12/31/2005 through 12/31/2009 tax years have been denied."

Taxpayer submitted a protest arguing that the refunds were timely submitted to the Department. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Memorandum of Decision results.

I. Corporate Income Tax - Statute of Limitations.

DISCUSSION

Taxpayer argues that the refund requests were timely filed with the Department and were triggered by an "Advance Pricing Agreement" between itself and the Internal Revenue Service ("IRS"). Taxpayer originally requested the Agreement from the IRS January 22, 2008. The resulting Agreement states that it defines "the best method for determining arm's-length prices of the Covered Transactions under I.R.C. section 482, the Treasury Regulations thereunder, and any applicable tax treaties." The Agreement reflected the results of negotiations "between the competent authorities of the United States and Canada" covering sales of Taxpayer's Canadian affiliate's products to customers in the United States. The Agreement resulted in an increase in the income of Taxpayer's Canadian affiliate and a decrease in Taxpayer's income. As explained in the Agreement, "The competent authorities for Canada and the United States agree to increase the income of [Canadian affiliate] and decrease the income of [Taxpayer] for the [Bilateral Advance Pricing Agreement]"

The Agreement provides that it "applies to Taxpayer's taxable years beginning on January 1, 2006 to the taxation year ending on December 31, 2011."

The Agreement states that the Agreement became effective on the date on "which all Parties execute this APA." Taxpayer signed the Agreement June 7, 2013. The IRS's representative signed the Agreement June 30, 2013. As

noted previously, Taxpayer submitted the amended Indiana returns August 6, 2013.

Indiana's statute of limitations is found at IC § 6-8.1-9-1(a) (amended 2015) which provides in relevant part as follows:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. Except as provided in subsections (f) and (g), in order to obtain the refund, the person must file the claim with the department within three (3) years after the latter of the following:

- (1) The due date of the return.
- (2) The date of payment.

Under the standard three-year rule, Taxpayer's refund requests were untimely. However, IC § 6-8.1-9-1(f) (amended 2015) provides an exception to the general rule.

If a taxpayer's federal income tax liability for a taxable year is modified by the Internal Revenue Service, and the modification would result in a reduction of the tax legally due, the due date by which the taxpayer must file a claim for refund with the department is the later of:

- (1) the date determined under subsection (a) or
- (2) the date that is one hundred eighty (180) days after the date on which the taxpayer is notified of the modification by the Internal Revenue Service. (Emphasis added).

In addition, IC § 6-3-4-6(c) (amended 2015) provides in part:

If the federal modification results in a change in the taxpayer's federal or Indiana adjusted gross income, the taxpayer shall file an Indiana amended return within one hundred twenty (120) days after the modification is made if the modification was made before January 1, 2011, and one hundred eighty (180) days after the modification is made if the modification is made after December 31, 2010. (Emphasis added).

An Advance Pricing Agreement standing alone will not result in the Advance Pricing Agreement being treated as a modification made by the IRS. However, in Taxpayer's unusual circumstances, the IRS—as opposed to Taxpayer—ultimately modified Taxpayer's federal taxable income.

In this case, Taxpayer filed the amended Indiana returns approximately 40 days after the date the executed Advance Pricing Agreement became effective which was well within the 180 days provided for under IC § 6-3-4-6(f) and well within the 180 days provided for under IC § 6-3-4-6(c). The Department agrees that the refund requests submitted pursuant to the amended 2006, 2007, and 2008 returns were timely filed. As to the refund request submitted pursuant to Taxpayer's amended return "for Calendar Year Ending 2005," the Agreement's terms appear contradictory. Although the Agreement stipulates that it "applies to Taxpayer's taxable years beginning January 1, 2006 to the taxation year ending on December 31, 2011," the Agreement also specifically states that the parties agreed to increase the income of [Canadian affiliate] and decrease the income of [Taxpayer]" for the "Taxation Year 2005." Despite this apparent contradiction and taken as a whole, the Department agrees that the Agreement constitutes a "federal modification" for the years 2005, 2006, 2007, and 2008 and that Taxpayer timely filed the amended Indiana returns by which it sought the refunds under dispute.

FINDING

Taxpayer's protest is sustained.

Posted: 06/28/2017 by Legislative Services Agency

An [html](#) version of this document.